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No. 15-1406

IN THE

Supreme Court of the United States

THE GOODYEAR TIRE & RUBBER COMPANY,

Petitioner,

v.

LEROY HAEGER; DONNA HAEGER; BARRY HAEGER; SUZANNE HAEGER,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

REPLY BRIEF IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

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INTRODUCTION

Plaintiffs fail to refute the existence of a circuit split over the causation standard that governs compensatory civil sanctions imposed under a court's inherent powers. As both the majority and dissent in this case acknowledged, the Ninth Circuit rejected a direct causation requirement when sanctions are imposed without the protections of criminal due process. The majority's rule violates this Court's decision in *Int'l Union v. Bagwell*, 512 U.S. 821 (1994), and splits with the authority in other Circuits requiring a direct causal connection between compensatory civil sanctions and the sanctioned conduct. Disregarding the Ninth Circuit's ruling, Plaintiffs imagine that the court found causation satisfied—but that is the exact issue that prompted Judge Watford's dissent. The majority and dissent framed the legal debate precisely, rendering this case an ideal vehicle to explore the circuit split.

Unable to contest the circuit split, Plaintiffs contend that the causation argument is "moot" because the district court calculated an alternative award in the event that the direct causation requirement was enforced. But the Ninth Circuit rejected direct causation and affirmed *the full amount* of the award. Underscoring how this case illustrates the legal principles at hand, the district court itself recognized that nearly $750,000 of the purportedly compensatory civil sanctions could not be directly linked to any misconduct.[1]

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[1] Goodyear disputes that the district court's $750,000 calculation adequately implemented the causation requirement. In any event, if this Court accepts *certiorari*, remand can determine the appropriate

Finally, Plaintiffs do not defend the Ninth Circuit's holding that attorneys' fees may be imposed as sanctions against a client for the conduct of its attorneys. Conceding that an individualized finding of subjective bad faith is required for compensatory civil sanctions, Plaintiffs do not cite or discuss *Link v. Wabash Railroad Co.*, 370 U.S. 626 (1962), the authority primarily relied on by the Ninth Circuit in affirming sanctions against Goodyear.

The Ninth Circuit's conclusory alternative holding that Goodyear participated in the misconduct does not satisfy the high standards that constrain federal courts when imposing sanctions under inherent powers. Sanctions against Goodyear under inherent powers require specific and thorough findings of subjective bad faith, supported by clear and convincing evidence. Echoing the errors of the courts below, Plaintiffs' argument that sanctions are supportable in this case threatens a client's ability to rely on the advice of outside counsel in discovery.

This Court should accordingly accept *certiorari*, and reverse.

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amount (if any) of the sanction based on guidance received from this Court.

ARGUMENT

I. Plaintiffs Fail To Refute That The Ninth Circuit Diverged From This Court And Other Circuits By Rejecting the Direct Causation Rule.

Tacitly conceding a circuit split, Plaintiffs do not address any of the authority from other circuits requiring civil, compensatory sanctions to be directly linked or carefully calibrated to the sanctioned conduct. *See* Pet. at 11-13 (collecting authority); *see, e.g.*, *Baycol Steering Comm. v. Bayer Corp.*, 419 F.3d 794, 808 (8th Cir. 2005) (overturning monetary sanction imposed under a court's inherent powers because it did not "relate[] *concretely* to costs . . . *directly incurred* because of [the sanctioned attorney's] actions") (emphasis added); *Bradley v. Am. Household, Inc.*, 378 F.3d 373, 378 (4th Cir. 2004) (overturning civil sanctions because "the amounts of the fines were not determined by reference to any losses incurred by the [plaintiffs] as a result of [defendant's] alleged failure to complete discovery"). The majority's opinion conflicts irreconcilably with the authority of other Circuits enforcing a causation requirement.

Without any ability to contest the split, Plaintiffs pretend that the Ninth Circuit actually found causation and that the causation issue is "moot." But both of these points show no fidelity to what the Ninth Circuit actually held.

First, Plaintiffs assert that the Ninth Circuit found a causal link under *Chambers v. NASCO, Inc.*, 501 U.S. 32 (1991), and that this causation finding comports with *Int'l Union v. Bagwell*, 512 U.S. 821 (1994). Judge Watford's dissent confirms that

Plaintiffs have mischaracterized a key aspect of the Ninth Circuit's ruling:

> The majority does not contend that a causal connection between Goodyear's misconduct and the fees awarded has been shown here, as required for the sanctions to be deemed compensatory. . . .
>
> [A] sanction can be deemed compensatory only if it compensates the injured party for losses sustained *as a result of* the sanctionable misconduct . . .
>
> [T]he fees awarded in this case were not sustained *as a result of* Goodyear's misconduct.

Pet. App. 46a-47a (emphasis in original). Judge Watford protested the majority's adoption of a "competing principle" (displacing the causation requirement) "that a fee award may be deemed compensatory even if the fees were *not* incurred as a result of the sanctionable misconduct, so long as the misconduct involves 'frequent and severe abuses of the judicial system.'" *Id.* at 47a (emphasis in original).

The majority itself, furthermore, expressly recognized that it was rejecting a direct causation requirement, defeating Plaintiffs' assertion that there is no split. Departing from prior cases, the court discarded the rule "that the specific amount of attorneys' fees and costs awarded when a court invokes its inherent powers must be *directly linked* to the bad faith conduct." *Id.* at 28a (majority op.) (emphasis added). The majority accordingly affirmed

the award to Plaintiffs of "all their attorneys' fees and costs in prosecuting the action" after the purported discovery misconduct without further scrutiny. *Id.* at 32a.

Plaintiffs defend this holding as consistent with *Chambers*, but their argument does not withstand scrutiny. First, unlike in this case, the fees in *Chambers* appear to have been incurred "as a direct result" of misconduct. *Id.* at 48a (Watford, J., dissenting). Second, "the Court in *Chambers* left no doubt that punishment was indeed a key purpose of the sanctions imposed in that case. . . . Because it was partly punitive, the sanctions award did not need to be limited to fees directly caused by Chambers' misconduct." *Id.* at 48a-49a. As Judge Watford explains, after *Chambers*, this Court in *Bagwell* held that such "punitive sanctions must be accompanied by the procedural protections applicable in criminal cases"—procedures which undisputedly were not followed here. *Id.* at 49a.

Indeed, the district court appreciated the difference: As Plaintiffs note, the district court set out an alternative award that could be issued in place of its $2.7 million award should the Ninth Circuit decide to follow the rule of direct causation. *Id.* at 180a, 185a. But the Ninth Circuit rejected that rule and affirmed the entire $2.7 million sanctions award rather than an alternative amount. *Id.* at 42a. As the alternative award was never adopted, Plaintiffs have no basis for insisting that the (theoretical) alternative award renders Goodyear's argument "moot." On the contrary, the alternative award illustrates the difference between the causation requirement and the path charted by the majority.

The legal issues have been properly framed by the majority and the dissent, and there is no dispute that the district court awarded far more in sanctions than if the causal connection rule applied. Given that the circuit split here is undisputed, this case presents an ideal vehicle to review this sanctions question, which carries significant repercussions for all parties accused of sanctionable conduct. This Court should accordingly accept *certiorari* to resolve this conflict by establishing clear standards for inherent authority sanctions.

II. Plaintiffs Do Not Defend The Ninth Circuit's Decision To Impose Attorneys' Fees As Sanctions Against A Client For The Conduct Of Its Attorneys.

Plaintiffs abandon the Ninth Circuit's holding that Goodyear can be sanctioned for the actions of its lawyers with attorneys' fees imposed under inherent powers. Disregarding the key predicate for the court's ruling, Plaintiffs fail to defend the Ninth Circuit's reliance on *Link v. Wabash Railroad Co.*, 370 U.S. 626 (1962). *See* Pet. App. 26a (Ninth Cir. Op.) ("Goodyear 'is deemed bound by the acts of [its lawyers] and is considered to have notice of all facts, notice of which can be charged upon the attorney.'") (citing *Link*, 370 U.S. at 634). Refusing to cite *Link* in their opposition, Plaintiffs effectively concede Goodyear's argument in its Petition that the Ninth Circuit erroneous relied on *Link* to enable a party to be sanctioned for the alleged actions of its counsel. *See* Pet. at 18-20.

Rejecting the Ninth Circuit's primary basis for affirming sanctions against Goodyear, Plaintiffs concede that inherent authority sanctions must be based on an individualized bad-faith finding. *See*

Opp. at 16. But that was not the rule followed by the Ninth Circuit, which instead undercut that standard by enabling the alleged actions of counsel to satisfy the personalized bad-faith inquiry. As Goodyear explained in its Petition, that holding creates a circuit split with the Eleventh Circuit. *See, e.g.*, *Byrne v. Nezhat*, 261 F.3d 1075, 1123 (11th Cir. 2001) ("To support its findings of bad faith and otherwise sanctionable conduct, the court impermissibly relied solely on the actions of counsel.").

Instead of engaging on these points, Plaintiffs try to portray the matter as a purely factual affair, highlighting the Ninth Circuit's statement that "the district court did not abuse its discretion in concluding that Goodyear participated directly in the discovery fraud." Opp. at 17 (citing Pet. App. 27a). But as Goodyear explained in its Petition, the Ninth Circuit did not support its ruling with the specific grounds required to affirm a finding of individualized, subjective bad faith. Pet. at 22. Like the Ninth Circuit, Plaintiffs instead rely largely on the district court's conclusion that in-house counsel was generally responsible for approving discovery responses.

Plaintiffs contend that there is no conflict with the Eleventh Circuit's decision in *Byrne*, because the district court found that Goodyear was the "final decision maker" on discovery responses. Opp. at 17. Plaintiffs apparently miss the point of *Byrne*: the Eleventh Circuit vacated inherent authority sanctions imposed on a client for "the actions of counsel," 261 F.3d at 1123, deeming it insufficient that the client "relied on" counsel when making decisions in the litigation. *Id.* at 1125-26. The

Eleventh Circuit required record evidence that the client "*knew* that a baseless claim had been brought on her behalf or that she was pursuing the [other party] for a harassing or other impermissible purpose." *Id.* at 1124 (emphasis added). In this case, Goodyear presented evidence that in-house counsel relied on the advice of counsel when reviewing and approving discovery responses, and the lower courts made no findings to the contrary. The Ninth Circuit's ruling that this routine practice by in-house counsel warrants inherent authority sanctions stands in conflict with the principle recognized in *Byrne*.

Plaintiffs also attempt to distinguish *Byrne* on the grounds that the district court made other factual findings against Goodyear relating to its Rule 30(b)(6) witness. *Byrne* itself requires "other evidence in the record" from which to infer bad faith from a false or inconsistent deposition statement. 261 F.3d at 1125. Goodyear, moreover, specifically challenged on appeal the district court's factual conclusions as to Goodyear's conduct, refuting the court's findings regarding Goodyear's corporate representative, and exposing the paucity of the evidence of Goodyear's bad faith.

Notably, the Ninth Circuit affirmed this finding without substantively addressing any of Goodyear's counterarguments. Pet. App. at 25a. But the weight of authority in the Circuits demands "clear and convincing evidence" of individualized, subjective bad faith to impose inherent authority sanctions on a particular party. *See* Pet. at 23. In the face of Goodyear's arguments, the Ninth Circuit's perfunctory affirmance failed to faithfully apply the "clear and convincing evidence" requirement.

As this Court has recognized, inherent authority sanctions are largely "shielded from direct democratic controls," *Roadway Express Inc. v. Piper*, 447 U.S. 752, 766 (1980), and are not a rule-based mechanism for sanctions, *Chambers*, 501 U.S. at 50. That is all the more reason to tread cautiously in considering such sanctions, and exactly why courts have imposed the subjective bad faith requirement as well as the clear and convincing evidentiary standard. *See id.* ("A court must, of course, exercise caution in invoking its inherent power, and it must comply with the mandates of due process, both in determining that the requisite bad faith exists and in assessing fees."). This Court should accept this case to reinforce those protections for all parties threatened with the prospects of inherent authority sanctions.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that this Court grant this petition for a writ of *certiorari*.

Dated: June 30, 2016

Respectfully submitted,

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